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CENTRAL FAX CENTER****APR 07 2008****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/719,321
Inventor(s) : Dennis Osamu Hirotsu
Filed : November 21, 2003
Art Unit : 3761
Examiner : Paula L. Craig
Docket No. : AA551C
Confirmation No. : 3072
Customer No. : 27752
Title : DISPOSABLE ABSORBENT ARTICLES CONTAINED IN
PACKAGE HAVING WINDOW

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on September 7, 2007 and the Advisory Action mailed on March 17, 2008, the time for filing this Brief being extended by one month pursuant to the fee charged to the Assignee's Deposit Account in the papers submitted herewith, please amend the above-identified application as follows, consider the accompanying remarks and reconsider the application. Attached hereto is a Petition for a One-Month Extension of Time, and the fee required under 37 CFR §1.17(a), providing for a timely response up to and including April 7, 2008.

A timely Notice of Appeal was filed on January 7, 2008.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

An appeal has been filed in co-pending U.S. Application Serial No. 11/130,674, which is related to the present application, but a decision has not yet been issued. The issues presented in the appeal of the '674 application, however, are different from those presented in the present application.

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STATUS OF CLAIMS

Claims 1-3 and 5-7 are rejected in the present application and are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

All Amendments, including the Amendment After Final Office Action filed on January 7, 2008, have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention is directed to a package for sanitary napkins products, the package comprising (a) at least one window and an outer surface; and (b) a plurality of individually wrapped sanitary napkins contained in the package. *See, e.g.*, page 2, lines 27-28, and page 5, lines 22-24. The plurality of individually wrapped sanitary napkins includes at least two different types of sanitary napkins having different physical properties or structures. *See, e.g.*, page 2, lines 29-31 and page 4, lines 6-12. Each type of sanitary napkin is identified by an indication means disposed on the wrapper of the respective sanitary napkins, wherein the indication means of at least one of each of the two types of sanitary napkins can be seen through the at least one window. *See, e.g.*, page 2, lines 31-32. The indication means is selected from the group consisting of colors, lines, patterns, ornamental designs, pictures, symbols, script, characters, and combinations thereof. *See, e.g.*, page 6, lines 9-11. The presently claimed invention allows a consumer to more quickly and easily determine the types of sanitary napkins in the single package, as well as help the consumer ensure that the different types of sanitary napkins are being used equally. *See, e.g.*, page 7, lines 24-27.

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GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-3 and 5-7 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kuske et al., US 6,318,555, in view of Lash et al., US 5,897,542, and further in view of Brisebois et al., US 6,454,095.

ARGUMENTS

Appellants respectfully submit that Claims 1-3 and 5-7 are patentable over the cited references.

Rejection Under 35 USC §103(a) Over Kuske et al. in View of Lash et al. and Further in View of Brisebois et al.

Claims 1-3 and 5-7 have been rejected under 35 USC §103(a) as being unpatentable over Kuske et al. (US 6,318,555) in view of Lash et al. (US 5,897,542) and further in view of Brisebois et al. (US 6,454,095). Appellants respectfully traverse this rejection and request that this rejection be reversed.

Kuske et al. teach a flexible packaging bag for absorbent articles with a visual display feature having a periphery that frames a graphic on the absorbent articles desired to be seen. Kuske et al. does not, as the Office Action properly admits, teach or suggest placing two or more different types of absorbent articles in the packaging such that indication means on the two or more types of absorbent articles are visible through the window. Kuske et al. therefore do not recognize the problem consumers have in consuming different types of absorbent articles in a single package equally. Kuske et al. further do not recognize the problem consumers have in quickly and easily identifying the types of absorbent articles contained in a single package at the point of sale, when that single package contains different types of absorbent articles. The presently claimed invention solves these problems by providing a package containing two or more types of sanitary napkins each having an indication means that identifies the type of each sanitary napkin, the package having a window through which the different types of sanitary napkins and indication means can be seen. This allows a consumer to more quickly and easily determine the types of sanitary napkins in the package, as well as help the consumer ensure that the types of sanitary napkins are being used equally. *See, e.g.*, page 7, lines 24-27.

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Lash et al. teach a package containing absorbent articles (i.e. diapers) having different absorbent capacities in a single package. Lash et al., however, do not disclose a package having a window through which the product can be seen by a consumer. The Office Action cites Lash et al. for the purpose of asserting that it would have been obvious to modify Kuske et al. to contain at least two different types of absorbent articles.

Appellants respectfully disagree with this assertion and proposed combination. Neither Kuske et al. nor Lash et al. recognize the problems outlined above with respect to having different types of absorbent articles in a single package. Therefore, neither Kuske et al. nor Lash et al. suggest or motivate one to arrive at the presently claimed combination to address such problems.

Furthermore, Kuske et al. specifically teach a visual display feature that is intended to frame a graphic on the absorbent article. The visual display feature of Kuske et al. is typically oriented on the end panel of its flexible packaging bag. *See, e.g.*, FIG. 3. Even though Kuske et al. may disclose packages with more than one window, for example, a window on the front panel and each side panel, only the front panel is designed to frame the graphic on the absorbent article. Therefore, only the graphic from one absorbent article is visible through the visual display feature of the package of Kuske et al. If one were to place the absorbent articles of Lash et al. into the package of Kuske et al., only the graphics of one type of absorbent article of Lash et al. would be visible through the visual display feature of Kuske et al. Thus even if the teachings of Kuske et al. and Lash et al. were combined, the benefits of the presently claimed invention would likely not be realized. Additionally, Lash et al. do not even teach or suggest sanitary napkins.

Brisebois et al. teaches a package of sanitary napkins that are individually wrapped, wherein the sanitary napkins each have an element of information that is indicative of a certain degree or level on a scale of reference (asserted by the Office Action to be indication means). The Office Action asserts that it would have been obvious to modify Kuske et al. to provide a package containing individually wrapped sanitary napkins having indication means, as taught by Brisebois et al., to provide information about the article in a way that is visually noticeable, readily visible and understandable to the user.

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Appellants respectfully disagree and point out neither Brisebois et al. or Kuske et al. teach or suggest placing different types of sanitary napkins in a single package. Even if one were to place different types of sanitary napkins in a single package of Kuske et al. with each sanitary napkin containing the element of information that is indicative of a certain degree or level on a scale of reference of Brisebois et al., only the element of information of one type of sanitary napkin of Brisebois et al. would be visible through the visual display feature of Kuske et al. Thus even if the teachings of Kuske et al. and Brisebois et al. were combined, the benefits of the presently claimed invention would likely not be realized. Appellants thus submit that the combination of Kuske et al. and Brisebois et al. is improper and that even if these references are improperly combined, the combination would not result in the presently claimed invention.

Appellants therefore submit that a *prima facie* case of obviousness has not been properly established. As a result, Appellants submit that Claims 1-3, and 5-7 are unobvious and patentable under 35 USC §103(a) over Kuske et al. in view of Lash et al. and further in view of Brisebois et al. Appellants therefore respectfully request that this rejection be reversed and all the claims be allowed.

SUMMARY

In view of all of the above, it is respectfully submitted that all rejections be reversed and that all the claims be allowed.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY

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CLAIMS APPENDIX

1. A package for sanitary napkins products, comprising:
at least one window and an outer surface; and
a plurality of individually wrapped sanitary napkins contained in the package, the plurality of individually wrapped sanitary napkins including at least two different types of sanitary napkins having different physical properties or structures, wherein each type of sanitary napkins is identified by an indication means disposed on the wrapper of the respective sanitary napkins, wherein the indication means of at least one of each of the two types of sanitary napkins can be seen through the at least one window and wherein the indication means is selected from the group consisting of colors, lines, patterns, ornamental designs, pictures, symbols, script, characters, and combinations thereof.
2. The package of Claim 1, wherein the at least two different types of sanitary napkins are defined by the absorbent capacity of the sanitary napkins, the kind of the sanitary napkins, the dimension of the sanitary napkins, or the combination thereof.
3. The package of Claim 1, wherein the window has a size large enough so that at least 30% of the contained individually wrapped sanitary napkins can be seen through the window.

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5. The package of Claim 1, wherein the package has an opening device which has a size large enough so that the different types of sanitary napkins can be picked up by the user through the opening device.

6. The package of Claim 5, wherein the package has a front panel, a rear panel opposed to the front panel, side panels which connects the front and rear panels, and a top panel which connects the front, rear, and side panels, and wherein the window is formed on the front panel and the opening device is formed on the top panel.

7. The package of Claim 1, wherein the window is formed by differentiating the translucency or the transparency at the window from the area surrounding the window.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

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